

RECENT VOTER SUPPRESSION INCIDENTS

By Wendy Weiser and Margaret Chen
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This document is intended to track voter suppression incidents and attempts in advance of the general election. The Brennan Center will be updating and re-posting this document regularly until Election Day.

NO MATCH, NO VOTE

Some states will not register voters or will [purge](#) them from the voter rolls if election officials cannot match their voter registration information against information in other government databases. The problem is the computer match processes states use are inherently unreliable. Between 15% and 30% of all match attempts fail because of typos, other administrative errors, and minor discrepancies between database records, such as a maiden name in one record and a married name in another or a hyphen in one record and not another. No match, no vote policies can block hundreds of thousands of voters through no fault of their own. More information on no match, no vote policies is available [here](#). This year, no match, no vote efforts across the country, if successful, could have a significant impact on the election, affecting tens of thousands of new voters.

- **Ohio.** On September 26, 2008, the Ohio Republican Party [asked](#) a federal court to issue an emergency ruling requiring the state to generate a list of more than 200,000 new voters whose information did not match other state records, presumably so those voters could be purged from the rolls right before the election, forced to vote provisional ballots, or challenged at the polls. They asked the court before the absentee ballots cast by new registrants were opened and counted. A federal court granted the temporary restraining order, and after a three-judge panel on the U.S. Court of Appeals for the Sixth Circuit stayed that order, the full appeals court, sitting *en banc*, [reinstated](#) it. On emergency review, the U.S. Supreme Court vacated the TRO on October 17, 2008, preventing chaos in the election in Ohio and [protecting](#) hundreds of thousands of Ohio

citizens from disenfranchisement-by-typo. That same day, one of the plaintiffs in the federal lawsuit [filed](#) a virtually identical suit with the Ohio Supreme Court, seeking essentially the same relief they lost in the federal courts. He also asked the court to prevent the counting of absentee ballots cast by unmatched voters unless or until the mismatches are cleared. The plaintiff [voluntarily dismissed](#) the lawsuit on October 21, 2008, and on October 22, 2008, the Secretary of State issued [two directives](#), which ensure that (1) no voter may be challenged at the polls solely on the basis of a mis-match; and (2) no absentee ballot may be rejected (or not counted) solely on the basis of a mis-match. Despite these directives and the failure of the efforts in court, Representative John Boehner of Ohio [wrote](#) to President Bush asking him to pressure the Department of Justice to weigh in on the issue. President Bush [forwarded](#) the request to Attorney General Mukasey, but press reports have [indicated](#) that the Attorney General will refrain from getting involved.

- [Florida](#). On September 8, 2008, the Florida Secretary of State instructed election officials to reject voter registration applications that do not pass an error-prone computer match process. In the first three weeks of the policy, 15% of registrations were initially bounced because of failed computer matches; election officials were able to catch and correct obvious typos in about $\frac{3}{4}$ of these cases, but to date, [more than 12,000](#) voters are being kept off the rolls. An analysis of the list reveals that African Americans make up 39% of blocked voters, and Latinos make up 34% of blocked voters whose race is known. There will likely be not enough time for election officials to correct the errors in the tens of thousands of registrations that came in right, but there is some reason for optimism. On October 21, 2008, legal counsel for the Florida Association of Supervisors of Elections [issued a legal opinion](#) stating that election officials could implement an Election Day solution in which un-matched voters could resolve matching problems at the polls, ensuring that their votes will count. The Brennan Center and other groups have [called upon](#) the supervisors to adopt a polling-place solution. Even Secretary of State Kurt Browning, who initially took the position that county election officials were prohibited from developing an Election Day fix, has acknowledged in recent public statements that they are authorized to do so. More information about “no match, no vote” in Florida, including the pending lawsuit filed by the Brennan Center in 2007, is available [here](#).
- [Wisconsin](#). After the Wisconsin Government Accountability Board (the state’s election board) [rejected](#) a proposal in July to retroactively implement a no “match, no vote” policy for all voters who registered since 2006, on September 10, the Attorney General [sued](#) the board seeking to force such a policy right before the election. The Board conducted an audit of its voter rolls and found a

22% match failure rate, including for [4 of the 6](#) members of the board. On October 23, 2008, the court [dismissed](#) the Attorney General's lawsuit, after concluding he lacked standing to bring the case; HAVA did not require the Government Accountability Board to link voters' eligibility to a successful match; and that doing so would violate the materiality provision of the Voting Rights Act. More information can be found [here](#).

- [Other states](#). No match, no vote policies are in place also in [Louisiana](#), [Iowa](#), and [South Dakota](#) pursuant to policies adopted well before the 2008 elections. Tens of thousands of voters have been denied registration in those states. Evidence suggests that Colorado also may be treating some voter registrations that fail to match as incomplete.

VOTER PURGES

Election officials across the country routinely [purge](#) millions of names from the voter rolls. Although purging is necessary to keep the voter rolls up to date and accurate, a recent Brennan Center [study](#) demonstrates that the processes states use for purging are prone to error and vulnerable to manipulation. Purges are typically done without notice to affected voters or the public, and without any public scrutiny whatsoever. As a result, thousands of registered voters show up at the polls each election year only to find that they are not on the rolls and cannot cast a ballot that will be counted. This year, unreliable and possibly illegal purges could keep thousands of votes from being counted.

- [Possible Illegal Purges Reported by New York Times](#). According to a recent [front-page article](#) by the New York Times, several states have been illegally purging their voter rolls this year, including Colorado, Georgia, Indiana, Louisiana, Michigan, Ohio, and Nevada. (The Brennan Center has not independently verified all these purges.)
- [Michigan](#). Michigan illegally purged its voter rolls this year within 90 days of an election and using non-forwardable mailings to recently registered voters, according to a recent federal court [ruling](#). The court [ordered](#) the restoration of about 1,400 voters who had been removed because their voter identification cards were returned as undelivered.
- [Colorado](#). In response to a New York Times [article](#), the Colorado Secretary of State [admitted](#) that at least 2,454 voters were purged illegally within 90 days of a federal election. Several thousand additional records were purged as potential "duplicates" within 90 days of the election, also in violation of federal law. Another several thousand were illegally purged based on non-forwardable

mailings to newly registered voters. Voting rights groups [filed](#) a lawsuit in federal court on October 24, 2008, [alleging](#) that the Colorado Secretary of State's recent purges violate federal law. On October 30, 2008, the parties entered into a court-approved agreement ensuring that the ballots of any wrongfully purged voter will be counted. The following day, after the Secretary of State told reporters that he was continuing to purge the voter rolls, Judge Kane [ordered](#) him to cease all efforts to remove names from the voter rolls before the election.

- [Georgia naturalized citizens](#). Georgia recently began using an unreliable matching process to purge the voter rolls of alleged non-citizens. The process they use misses naturalized citizens because it only checks the citizenship documents used to obtain driver's licenses, no matter how long ago, and those records are not updated when legal residents become naturalized. According to a State attorney, 4,538 voters, 3,821 of them newly registered, have been [flagged](#) as non-citizens. A federal court refused to block this practice in a recent [lawsuit](#) filed by the Mexican American Legal Defense and Education Fund and the Lawyers' Committee for Civil Rights Under Law. The United States has also [intervened](#) and said that the practice should have been pre-cleared. On October 27, 2008, a three-judge panel [ruled](#) that the State [must allow](#) voters whose names were flagged because of an attempted purge of alleged non-citizens to cast a ballot on Election Day.
- [Muscookee County, Georgia](#). Earlier this year, a county election administrator in Muscookee County, Georgia [purged](#) 700 people who were supposedly ineligible because of criminal convictions. The purge was highly inaccurate and included people who never received even a parking ticket.
- [Madison County, Mississippi](#). About a week before the Mississippi primary, an election administrator in Madison County, Mississippi improperly purged [approximately 10,000](#) voters, reportedly from her home computer. Reportedly, the purge was detected when it was discovered that a local candidate was removed from the voter rolls. By all accounts, the Secretary of State's staff successfully reinstated the erroneously purged voters in time for the primary.

VOTER CHALLENGES

Political operatives sometimes [challenge](#) voters' eligibility either before Election Day or at the polls, based on names culled from unreliable [caging lists](#) or other lists they develop. While the rules and procedures for voter challenges vary from state to state, these challenges can lead to voter intimidation, long lines at the polls, and disenfranchisement of eligible voters.

[Historically and in recent years](#), caging and challenge operations have targeted minority

communities, students, and homeless citizens. Widespread challenges are expected across the country on Election Day. Recent incidents include:

- Montana. The Republican Party of Montana [challenged](#) the registrations of over 6,000 voters in 7 counties based on change of address information. Many were [service members](#) and students eligible to vote in Montana but who had their mail forwarded to where they were serving or going to school. Under Montana's challenge rules, these voters would have had to answer the challenges to the satisfaction of election officials before being allowed to vote. After a public outcry—including [criticism](#) by the Republican Lieutenant Governor—the party [abandoned](#) the challenges. For more information, click [here](#). In a resulting lawsuit brought by the Montana Democratic Party, on October 10, 2008, a federal judge [found](#) that the challenges were frivolous and that it would violate federal law for state election officials to deny anyone the ability to vote based on these challenges.
- No home, no vote. The Chairman of the Republican Party of Macomb County, Michigan reportedly told an [online publication](#) that the party planned to mount challenges to voters whose names appeared on foreclosure lists. After public criticism and [instructions](#) by the Michigan Director of Elections that these challenges are insufficient under Michigan law, the Chairman [denied](#) that there were such plans (and even sued the publication for libel). There have been fears and [reports](#) that similar challenges will be mounted in other states, particularly battleground states such as Ohio where [more than 5%](#) of homes are currently in the foreclosure process. Similar challenges are possible across the country on Election Day unless election officials take immediate steps to ensure that those in danger of losing their homes do not also lose their vote. On October 20, 2008, the Democratic and Republican parties [agreed](#) that appearance on a foreclosure list is not a reasonable basis to challenge a voter and that no voter will be challenged on that basis. On October 24, 2008, an Indiana state court [ruled](#) that the appearance of a name on a foreclosure or eviction list is not a sufficient basis for a challenge or for a ballot not to be counted.
- Ohio mailer. Ohio election officials sent a non-forwardable mailer to voters on the rolls, and over 600,000 were returned as undeliverable. The list was provided to the political parties, and there were fears that this list would be the basis of challenges. After concerns were raised, the Ohio Secretary of State issued a [directive](#) explaining that returned mail alone is not a sufficient basis to cancel a voter's registration or to sustain a pre-Election Day challenge. More information on why returned mail is an unreliable indicator of residence or eligibility can be found [here](#).

- Ashland County, Ohio. A man [filed](#) challenges to the registrations of 21 young people currently incarcerated at a juvenile correctional facility arguing that they should have registered using their original home addresses, not the address of the correctional facility. There is no allegation and no reason to question that these individuals are not eligible to vote in Ohio. The Board of Elections [upheld](#) the challenges, which are being [appealed](#).
- Lake County, Illinois. On October 28, 2008, the Illinois Republican Party [filed](#) a lawsuit seeking to segregate the ballots cast by Lake County voters who registered to vote through a particular voter registration group and to treat those ballots as provisional ballots instead of regular ballots. If the lawsuit succeeds, hundreds, perhaps thousands, of voters could face hurdles to having their votes counted.
- Indiana. The Indiana Secretary of State [stated](#) that voters whose voter registration acknowledgment cards were returned to election officials as undeliverable may be challenged on Election Day. Thousands of voters could be affected. As noted above and [here](#), there are a number of reasons why undeliverable mail is an unreliable indicator of voter eligibility.

TECHNICAL BARRIERS TO VOTER REGISTRATION AND VOTING

In the Jim Crow era, technical barriers to voter registration and voting were common. In the 1960s, Congress [tried to put an end](#) to these types of barriers, prohibiting officials from denying the right to vote based on any immaterial “error or omission” on voting-related paperwork or records. In this election cycle, there has been a resurgence of technical barriers based on the failure to check unnecessary boxes on forms.

- Colorado registrations. Colorado is [treating](#) applications missing [unnecessary checkmarks](#) to indicate that the registrant lacks a driver’s license as incomplete. [Thousands](#) of recent registrations are already affected, and there will likely be [more](#) as counties process new forms. Two counties, Larimer and Jefferson, processed applications with missing checkmarks, prompting the Colorado Secretary of State to ask the state Attorney General for an informal opinion on the issue. The [opinion](#), dated October 24, 2008, [supports](#) the Secretary of State’s position, stating that applications with missing checkmarks are incomplete and should not be processed. On October 29, 2008, the Denver Elections Division [announced](#) that it would allow the remaining Denver voters whose applications are missing checkmarks to fix the problem and vote a regular ballot at the polls on Election Day.

- Florida registrations. Florida still rejects voter registration forms submitted without checkmarks in check boxes that are duplicative of other information on the forms. Thousands of votes were lost in prior federal elections because of this practice.
- Ohio absentee ballots. In September 2008, the Ohio Secretary of State announced the election officials must reject absentee ballot requests made by voters whose eligibility was not in serious doubt because of their failure to check an unnecessary check box. A federal court ordered the Secretary of State to process those ballot requests.
- Nevada voter registration corrections. On October 20, 2008, the Nevada Republican Party wrote to the Secretary of State asking him to stop county officials from allowing voters who registered before the voter registration deadline but whose applications were incomplete to vote after correcting their applications. Nevada law allows voters to correct their applications within fifteen days after receiving notice from the state. On October 22, 2008, the Nevada Secretary of State rejected this request and ruled that applications corrected after the voter registration deadline but within 15 days after the county clerk sends notice are timely.
- Voter errors on absentee ballots. In Cuyahoga County, Ohio, 2,700 absentee ballots have been rejected and may not be counted because voters did not sign or seal their ballots properly. In Palm Beach County, Florida, election officials rejected hundreds of absentee ballots because voters did not sign their ballot envelopes or signed in the wrong place.
- New Mexico hand-tallied ballots. The New Mexico Secretary of State, on the advice of the Attorney General, planned to reject hand-tallied paper ballots that voters failed to mark properly. The state Supreme Court ruled that votes must be counted if election judges unanimously agree on the voter's intent in marking the ballot. Improper marks on ballots may be an indication of poor ballot design and instructions.

STUDENT VOTING BARRIERS

Students who attend school away from their homes often fulfill residency and other requirements to be able to register and vote in the communities in which they attend school, but there are obstacles and efforts to discourage them to register and vote. Across the country, there have been reports of widespread misinformation about student voting rights, misleading and intimidating statements, and registration and residency barriers unique to students. The

fact that students are readily identifiable at their college community polling stations also makes them easy targets for partisan challengers or voter intimidation efforts. The [result](#) is a disproportionate number of student voters being challenged at the polls, discouraged from voting, or prematurely told to cast a provisional ballot.

- [Dorm room addresses](#). Local registrars in several states, including in [Virginia](#), were denying registration to students who provided dorm room addresses even though those are valid registration addresses.
- [Misleading and intimidating information](#). A registrar in Montgomery County, Virginia, affecting Virginia Tech University, issued a memo giving incorrect and intimidating information to students about the consequences of registering to vote, including possible loss of financial aid and tax dependence status. Similarly, a county clerk in Colorado Springs, Colorado [incorrectly told](#) students at Colorado College that they could not vote at school if their parents claimed them as dependents on their federal tax returns. The websites of the [Virginia](#) and Indiana Secretary of States still contain misleading information that [could dissuade](#) eligible student voters.
- [Prairie View, Texas](#). On October 10, 2008, the registrar of Waller County, Texas entered into a [consent decree](#) with the U.S. Department of Justice to stop imposing unfair and illegal [barriers](#) to student voting.
- [Restrictive residency rules](#). Several states make it very difficult for students to establish residency for voting purposes. In Idaho and Tennessee, for example, students cannot establish voting residency unless they have affirmative plans to remain in the state after graduation. Virginia and Indiana also make it difficult for students to establish residency.
- [Restrictive absentee voting](#). Michigan and Tennessee require all first-time voters who registered by mail to vote in person; they cannot vote absentee. This makes it nearly impossible for college students (a great percentage of whom are young, first-time voters) to vote in their hometowns. 66 of the Michigan's 83 county clerks have partnered to verify students' identities where they attend school to allow these first-time voters to cast absentee ballots instead of crossing the state to vote in their hometowns. A state legislator has [asked](#) the Attorney General to block the practice.
- [Intimidation aimed at students](#). A [flier](#) recently disseminated on the campus of Drexel University in Philadelphia warned that undercover officers would be present at the polls, looking for voters with outstanding warrants or parking violations.

VOTER REGISTRATION ACCESS

According to the [U.S. Census Bureau](#), 30% of Americans were not registered to vote in 2006. A range of barriers to voter registration access could affect registration rates in certain communities. Several states have enacted laws that impose [unnecessary burdens](#) on organized efforts to register voters, which target communities that have the greatest barriers to registration. Threats of criminal penalties and crippling civil fines for failure to comply with requirements have forced community groups to [stop or substantially cut down](#) on registering voters. A policy brief on restrictions to voter registration drives can be found [here](#).

- Veterans. The Department of Veterans' Affairs [denied](#) voter registration access to residents and patients of its facilities, refusing to allow election officials or nonpartisan groups to offer voter registration services, and failing to provide such services itself. A last-minute [change](#) in policy offered only a [partial fix](#) to this problem. More information is available [here](#).
- Voter registration drive restrictions. Several states, including [New Mexico](#) and [Florida](#), have enacted restrictive laws that interfere with the ability of groups to do voter registration drives. The Florida law was tied up in [litigation](#) filed by the Brennan Center and so has not been in effect for this election season. A court [refused](#) to block the New Mexico law, and a number of community groups, especially those that work with volunteers, have not been able to register new voters.
- Noncompliance with federal voter registration law. A number of states have not been providing voter registration services at social service agencies, as [required](#) by the federal Motor Voter law. Recent lawsuits filed by [Project Vote](#) and [Demos](#) seek to enforce states' compliance with the implementation of the NVRA. On October 28, 2008, a federal appeals court [ruled](#) that Ohio state officials violated federal law by failing to provide voter registration services at public assistance offices.

VOTER INTIMIDATION AND DECEPTIVE PRACTICES

In recent elections, robo-phone calls and misleading flyers, often targeting minority and low-income communities, have spread false information regarding elections and voting qualifications. For examples of such documents, click [here](#).

- New Mexico. Two families [reported](#) visits by a private investigator inquiring about relatives that the state Republican Party [alleges](#) voted fraudulently in the June primary. The [private investigator](#) requested identification for relatives in question as proof of their eligibility, potentially [in violation](#) of federal law. The Bernalillo County Clerk confirmed both individuals' legitimate registrations. On October 27, 2008, the Mexican American Legal Defense and Education Fund [filed](#) a lawsuit seeking an injunction to stop further intimidation.
- Virginia. A phony State Board of Elections flier was [posted](#) around the Hampton Roads area, stating that Republicans vote on Tuesday, November 4th, and Democrats vote on Wednesday, November 5th. The Virginia State Police [determined](#) that flier was an "office joke" and not intended to deceive voters.
- Philadelphia fliers. Deceptive fliers about the consequences of voting were [distributed](#) in a predominantly African American neighborhood in Philadelphia.
- Greene County, Ohio. A law enforcement officer in Greene County, Ohio [sought](#) the names of 300 voters who registered and voted at the beginning of Ohio's early voting period in a town [made up](#) largely of students. The effort, which was later [withdrawn](#), was criticized as an effort to intimidate student voters and deter others from voting.
- Hamilton County, Ohio. In a move that could intimidate and deter voters, Hamilton County Prosecutor Joe Deters recently [requested](#), via subpoena, personal information for 40% of the voters who registered and immediately cast a ballot during the weeklong period in which Ohio allows same-day registration and voting.
- California. Dozens of voters [reported](#) that a firm hired by the California Republican Party tricked them into registering with the GOP when [signing a petition](#) they believed to toughen penalties against child molesters. The Los Angeles County Registrar-Recorder is [reviewing](#) 9,000 registration affidavits submitted by the firm to determine if any of the party affiliation changes were involuntary.
- Travis County, Texas. County officials are looking for a man who may be [providing](#) misleading information regarding the state's straight-party voting option, telling voters that in addition to a straight-party vote, they must also select the name of the candidate they would like vote for president. In actuality, doing this would de-select the mark automatically made by the straight-party vote.

- Madison County, North Carolina. Residents have [complained](#) of misleading calls that provide inaccurate information regarding absentee ballot deadlines. The State Board of Elections is investigating.
- Kern County, California. A radio host [announced](#) that Republicans are being urged to vote on November 4 and Democrats on November 5. Although the host has said he meant it as a joke, the county elections chief has asked the radio station to stop providing misleading information.
- Baltimore City, Maryland. In Maryland, people with felony convictions can register to vote when they have completed the terms of their sentence, including probation and parole. The Baltimore city elections board [sent](#) letters to 422 people with felony convictions who registered to vote asking them to verify that they had completed their sentence, but the letter did not provide any information on what proof these voters must provide, who to contact, or a deadline for response. Although the state Attorney General has said it would attempt to contact these individuals, it is unclear if they will be added to the rolls for the November election.
- Texas. In early October, an email widely circulated [falsely warned](#) voters that a straight-party vote would not register a vote for president. In fact, if a voter using Texas ballots separately records a vote for president after voting straight-party, the vote for president will be deselected and will not count.
- Florida. The St. Petersburg Times reported that the Republican National Committee [sent](#) non-forwardable mailings to older Democratic voters, falsely stating that recipients are registered as Republicans and suggested that undeliverable mailings could be used to compile challenge lists. The RNC claimed that the controversial mailing was just a fundraising piece.
- Wisconsin. The Wisconsin Attorney General announced that he [will deploy](#) more than 50 assistant attorney generals and state agents on Election Day to polling places around the state to guard against voter fraud. This is expected to intimidate voters.
- Minnesota. The non-profit group Minnesota Majority, pretending to be from the Secretary of State's office, [made calls](#) to voters questioning their registrations in a supposed attempt to uncover voting irregularities.

POOR BALLOT DESIGN

Poorly designed ballots—remember the butterfly ballot?—can lead to the loss of thousands of votes. A recent Brennan Center [report](#) demonstrates that ballot design problems are still widespread and have caused thousands of lost votes in recent elections. Already, there have been problems relating to November’s election:

- Mississippi Senate race. Mississippi election officials were sharply criticized, in a New York Times [editorial](#) and in a [letter](#) sent by the Brennan Center, for their decision to place the Wicker-Musgrove U.S. Senate race at the bottom of Mississippi’s ballot. This “ballot trick” placed the Senate race far below the other federal races listed in the 2008 election, creating a confusing layout for the ballot, one that could potentially mislead and disenfranchise hundreds of thousands of Mississippi voters in that race, particularly low-income and minority voters. More information can be found [here](#).
- Twelve Ohio counties. Twelve Ohio counties released sample paper ballots that split the presidential contest over two columns for this November’s election. As the Brennan Center’s [study](#) found, this particular layout often confuses voters and causes them to double-vote, an action which ultimately results in an uncounted ballot. On September 17, 2008, the Brennan Center sent a [letter](#) to the board of elections in all Ohio counties, urging them to reconsider their ballot layout and place the presidential contest in a single column on the paper ballot. The Ohio Secretary of State forwarded the letter to all county board of elections as well. Further details can be found [here](#).
- North Carolina straight-party voting. As a result of a [ballot design problem](#) in North Carolina, votes for president may have already been lost in the early voting period. The ballot is [designed](#), counter-intuitively, so that a straight-party vote *does not* include a vote for president; voters must separately mark their presidential contest choice. In [previous](#) federal elections, between 2.5% and 3.2% of ballots in North Carolina did not include a vote for president. A Brennan Center [study](#) found that if more than 1% of voters fail to cast a vote for president, it is typically an indication of a ballot design flaw or other problem.

ELECTION DAY PREPAREDNESS

Inadequate staffing, poor resource allocation, ballot shortages, and machine malfunctions can lead to long lines at the polls, or worse, discourage people from voting at all. These problems have already been reported from across the country in early voting. The Brennan Center,

Common Cause, and Verified Voting recently released a 50-state [study](#) of states' contingency plans and vote counting procedures, finding that many states need improvement. A [report](#) released by the Advancement Project finds that several battleground states are not prepared for unprecedented voter turnout in November, and that resources are inequitably allocated. This document is not tracking the incidence of these problems.

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For more information, or if you have incidents you would like to bring to our attention, please email brennancenter@nyu.edu.